



Office of the Attorney General  
State of Texas

April 10, 1992

DAN MORALES  
ATTORNEY GENERAL

Ms. Merri Schneider-Vogel  
Attorney  
Bracewell & Patterson  
2900 South Tower Pennzoil Place  
Houston, Texas 77002-2781

OR92-92

Dear Ms. Schneider-Vogel:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14557.

You represent the Houston Independent School District (the HISD), which has received a request from a teacher employed by the HISD for "all written documentation (statements, observations, summaries, etc.) concerning [the requestor's] past two years at [the school at which the requestor teaches]." During the past two years, the requestor had been referred to a psychologist employed by the HISD and had visited with the psychologist.<sup>1</sup> Thus, documents responsive to this request include certain information that the psychologist maintains.<sup>2</sup>

You state that the information the psychologist maintains falls into two categories. One category is information in the form of notes the psychologist took referencing information the teacher gave her directly. The psychologist does not object to releasing this information to the requestor, and you state that she will do

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<sup>1</sup>You have informed us that, under HISD policy, a school administrator can refer a teacher to the HISD psychologist if the administrator feels that the teacher's emotional problems may affect the teacher's job performance.

<sup>2</sup>If the HISD maintains any information responsive to the requestor's request that is not maintained by the psychologist, you do not claim that it is exempted from disclosure. Accordingly, you waive any exceptions you may have claimed (with the exception of any material that may be confidential under section 3(a)(1)), and you must release to the requestor all of the information that is not at issue here. See V.T.C.S. art. 6252-17a, § 7(a).

so. The second category is information that, although it concerns the teacher, consists of notes the psychologist made regarding conversations between the teacher's principal and the psychologist. You contend that the information in the second category is excepted from public disclosure for two reasons. First, you assert that "the information requested is not information gathered or maintained by a governmental body and are rather personal notes of the psychologist." Second, you assert that section 3(a)(11) of the Open Records Act (the act), V.T.C.S. art. 6252-17a, protects the requested information from disclosure. You have submitted copies of the requested documents in the second category for our review.

We consider first your threshold contention that the requested information does not fall within the act because (you contend) the information consists of the psychologist's personal notes. Under the act, "[a]ll information collected, assembled, or maintained by or for governmental bodies . . . in connection with the transaction of official business is public information . . . [with specified exceptions]." V.T.C.S. art. 6252-17a, § 3(a). A few of this office's early open records opinions found that "personal notes" of a public employee were not "information collected, assembled, or maintained by governmental bodies . . . in connection with the transaction of official business." For example, in Open Records Decision No. 77 (1975), upon which you rely, we concluded that the notes faculty members made at a grievance committee meeting were not subject to the act. Open Records Decision No. 77 (1975) at 2. In that fact situation, each faculty member took the notes solely for his or her individual use as a "memory reminder," and each faculty member had sole possession of the notes he or she had taken. *Id.*

We do not believe the psychologist's notes fall within the narrow category defined in Open Records Decision No. 77. In contrast to the notes in Open Records Decision No. 77, the HISD psychologist made and kept these notes in her capacity as a psychologist employed by the HISD. Accordingly, these notes constitute governmental information subject to the act. *See* Open Records Decision Nos. 450 (1986); 327 (1982); 225 (1979).

Next, while you do not assert that section 3(a)(1) exempts the requested information from public disclosure, this office will consider section 3(a)(1) on behalf of the governmental body if we believe that it may apply. *See* Open Records Decision No. 481 (1987) at 2. Section 3(a)(1) of the act excepts from required disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." The requested records consist of notes a psychologist took regarding a person with whom she had a professional-patient relationship. Records

regarding the identity, diagnosis, evaluation, or treatment of a patient are confidential and may be released only pursuant to chapter 611, Health and Safety Code. Health & Safety Code § 611.002. The requested records do not concern the "identity, diagnosis, evaluation, or treatment of a patient"; accordingly, chapter 611 does not apply in this situation. We therefore consider whether section 3(a)(11) of the act excepts the requested records from disclosure.

Section 3(a)(11) protects advice, opinion, or recommendation intended for use in the deliberative process. Open Records Decision No. 538 (1990). Section 3(a)(11) does not protect facts and written observations of facts and events that are severable from advice, opinion, and recommendations. Open Records Decision No. 450 (1986). A large portion of the documents you seek to withhold from the requestor consists of notes recording facts about events that were occurring at the school where the requestor works. Section 3(a)(11) does not protect factual information. Parts of the documents contain notes regarding the psychologist's, and other people's, recommendations and opinions. Section 3(a)(11) protects this information from disclosure.

In summary, the requested records are governmental records subject to the act. Section 3(a)(1), incorporating chapter 611, Health and Safety Code, does not permit you to withhold the records from the requestor. Section 3(a)(11) permits you to withhold only those portions of the records containing advice, opinion, or recommendation. You must release factual portions of the records to the requestor. For your convenience, we have marked those portions of the documents that you may withhold from the requestor.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-92.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Kym Oltrogge".

Kym Oltrogge  
Assistant Attorney General  
Opinion Committee

KO/lmm

Ref.: ID# 14557